

### **REMARKS**

Claims 1, 6, 10-12, 14, 20-22 and 24-31 are pending in the present application. The claims are directed toward methods for detecting the effect of reagents and test conditions on eukaryotic cell cultures and test kits for performing the methods. The methods and kits may be used, for example, to screen agents for their effect on eukaryotic cells and thereby identify potential anticancer drugs for use in humans and animals. The methods and kits may also be used in toxicology assays to help determine the toxicity of an agent in humans and animals. Claims 2-5, 7-9, 13, 15-19 and 23 have been cancelled and claims 1, 6, 10-12, 14, 20 and 22 are currently amended, whilst claims 24-31 are new. Favorable consideration of the currently pending claims is respectfully requested in light of the amendments and following remarks.

Because the Advisory Action did **not** indicate that the proposed amendments would **not** be entered, Applicants assume that the Examiner entered the amendments submitted in the Second Amendment and Response to Office Action filed November 24, 2003.

#### **Rejection Under 35 U.S.C. § 103(a)**

In the Advisory Action mailed February 26, 2004, the Examiner maintained the rejection of Claims 1-22 under 35 U.S.C. § 103(a) as unpatentable over Squirrell (U.S. Patent No. 5,648,232) in view of Webster's Dictionary (1984). More specifically, the Examiner stated that the rejection was maintained because **all** the claim limitations were disclosed or suggested in the cited prior art. In view of the specification as filed and the pending claim amendments, Applicants respectfully traverse the rejection.

Each of the amended claims contains an element that is **not** present in the Squirrell patent. For instance, claim 1 recites the addition of a "reagent which is suspected of having a pharmaceutical activity". This reagent is proposed to effect

eukaryotic cell integrity upon incubation of the cell culture in the presence of the reagent. The use of a pharmaceutically active reagent is not suggested or taught by the Squirrell patent. The Squirrell patent focused primarily on the detection of microorganisms and/or amount of microorganisms, such as bacteria. The Squirrell patent also taught that cells were lysed by a variety of methods, including the addition of detergents to aid in the release of material for detection, see column 5, line 35, and claims 21-23. In the present application, detergents are clearly not materials suspected to possess pharmaceutical activity, and so the “reagent” as recited in the present claims is distinguishable from the Squirrel patent. Applicants respectfully submit that the instant claims are **patentably distinct** from the Squirrel patent and respectfully request withdrawal of this rejection.

In addition, amended claim 11 incorporates not only the above-referenced pharmaceutically active “reagent” but also a separate lysis step, which is not taught or suggested in the Squirrel patent. Clearly, claim 11 and the claims dependent therefrom are now even further removed from the teachings of the Squirrell patent. Applicants therefore respectfully request withdrawal of the § 103(a) rejection. Applicants submit that the amendments to the claims overcome the Examiner’s rejection, and withdrawal of the rejection is respectfully requested.

With regard to the new claims 24-31, no new matter is added. Support for the new claims may be found throughout the specification and claims as filed. In an effort to assist the Examiner, support for the following claims may be found at the following locations and elsewhere in the specification.

Claim 24 is the product of re-writing and clarifying the subject matter of claim 1 and previous claim 8.

Claims 25-26 are the product of re-writing and clarifying the subject matter of claim 1 and previous claim 9 and with reference to page 8, lines 1-3 of the specification.

Claim 27 is the product of re-writing and clarifying the subject matter of claims 1 and 11 and previous claim 8.

Claim 28 is the product of re-writing and clarifying the subject matter of claims 1 and 6.

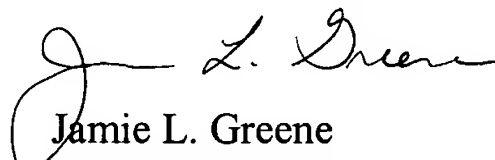
Claim 29 is the product of re-writing and clarifying the subject matter of claims 1 and 10.

Claims 30-31 are the product of re-writing and clarifying the subject matter of claim 1 in combination with page 6, line 31-35.

### **CONCLUSION**

Based upon the amendments and remarks provided above, Applicants believe that Claims 1, 6, 10-12, 14, 20-22 and 24-31 are in condition for allowance. A Notice of Allowance is therefore respectfully solicited. No fees are believed due; however, the Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment, to Deposit Account No. 11-0855. If the Examiner believes any informalities remain in the application that may be corrected by Examiner's Amendment, or there are any other issues that can be resolved by telephone interview, a telephone call to the undersigned attorney at (404) 815-6500 is respectfully solicited.

Respectfully submitted,

  
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